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**SUPREME COURT OF THE UNITED STATES**

October Term 1972

THOMAS TONE STORER, et al., )  
(LAWRENCE FROMMHAGEN, et al., )  
Plaintiff-Intervenor, )

Petitioners, )

-vs- )

EDMUND G. BROWN, JR., et al., )

Respondents. )

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GUS HALL, et al., )

Petitioners, )

-vs- )

EDMUND G. BROWN, JR., )

Respondent. )

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**AMICUS CURIAE**  
**BRIEF ON BEHALF OF**  
**APPELLANTS**

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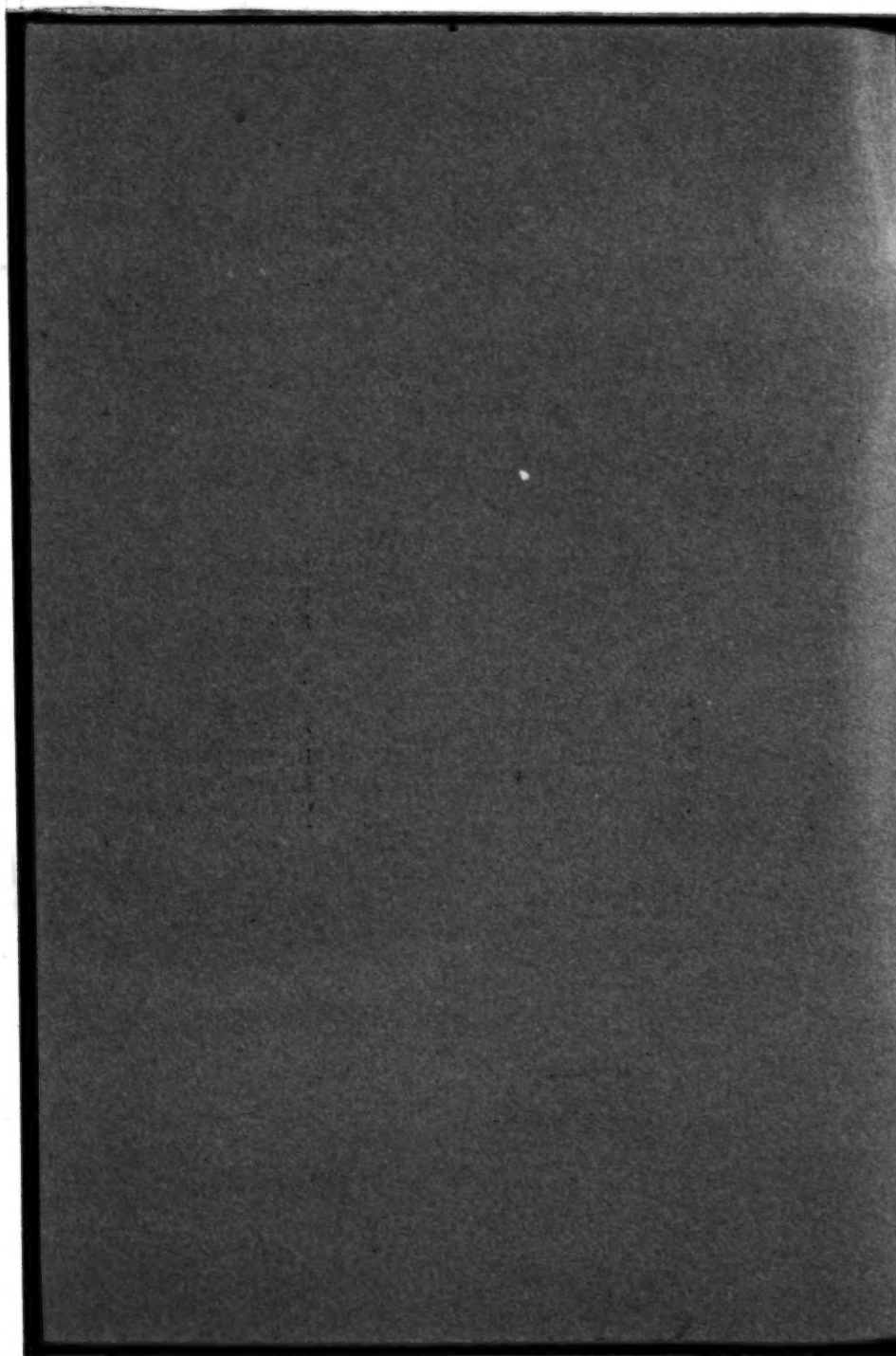


TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities Cited	ii
Interest of Amicus Curiae	1
Summary of Argument	2
Argument:	
IN THE DEMOGRAPHIC CONTEST OF CALIFORNIA, THE 5% REQUIREMENT, IN AND OF ITSELF, IS AN EFFECTIVE BAR TO INDEPENDENT CANDIDATES GAINING BALLOT STATUS. IN ESSENCT, THE 5% REQUIREMENT IN CALIFORNIA IS A QUALITATIVELY GREATER BURDEN THAN THE 5% REQUIREMENT APPROVED BY THIS COURT IN <u>JENESS V FORTSON</u> , 463 US 431, 91 S CT 1970 (1971).	3
Conclusion	9
Appendix	10

TABLE OF AUTHORITIES CITED

Cases

Page

Bullock v Carter  
405 US 134 (1972) : 9

Jeness v Fortson  
403 US 431, 91 S Ct 1970 (1971) 4

Williams v Rhodes  
393 US 23, 89 S Ct 5 (1968) 4

Miscellaneous

Financing the 1968 Election,  
Herbert E. Alexander, D.C.  
Heath and Co., Lexington,  
Mass., 1971 5

AMICUS CURIAE  
BRIEF ON BEHALF OF  
APPELLANTS

Interest of Amicus Curiae

The Committee for Democratic Election Laws (CoDEL) represents a broad cross section of citizens concerned with election laws which impede the democratic process. Intervenor's activities include providing legal representation in cases challenging election laws; providing expert testimony on election laws in legal challenges to election laws; providing a voice for its constituents before legislatures concerning laws dealing with the electoral process and in providing information regarding a variety of issues touching on the electoral process, such as the struggle for bi-lingual ballots and to facilitate voter registration.

CoDEL believes that California's 5% requirement unduly burdens the rights of citizens to vote and to associate in political parties.

Summary of Argument

Amicus Curiae files this Brief in support of the Appellants' contention that the California Election Code, as applied to independent candidates is unconstitutional. More specifically, Amicus Curiae contends that Section 6831 of said Code requiring independent candidates to submit nominating papers equal to five percent (5%) of the entire vote in the preceding general election is unconstitutional regardless of whatever restrictions California imposes on the collection of this number of petitions.

Five percent requirements have proven in practice to represent a burden on

voting and associational rights. In 1972 no candidate qualified for the ballot by petitioning in any state have a 5% requirement.

When candidates have qualified for ballot status by submitting this number of petitions it was due to exceptional circumstances and did not reflect the fairness of the requirement.

California's five percent requirement is qualitatively greater a burden on voting and associational rights than is Georgia's five percent requirement due to the costs of gathering the requisite number of signatures in California.

#### ARGUMENT

IN THE DEMOGRAPHIC CONTEXT OF CALIFORNIA, THE 5% REQUIREMENT, IN AND OF ITSELF, IS AN EFFECTIVE BAR TO INDEPENDENT CANDIDATES GAINING BALLOT STATUS. IN ESSENCE, THE 5% REQUIREMENT IN CALIFORNIA IS

A QUALITATIVELY GREATER BURDEN  
THAN THE 5% REQUIREMENT APPROVED  
BY THIS COURT IN JENESS V FORTSON,  
463 US 431, 91 S CT 1970 (1971).

This Court has held unconstitutional election laws which "in effect tends to give [the Democratic and Republican parties] a complete monopoly" Williams v Rhodes, 393 US 23, p 32; 89 S Ct 5, p 11 (1968).

Historically, requirements that candidates obtain petitions equal to 5% of the voters have operated to exclude independents and "third" parties from the ballot. Candidates have qualified under such provisions only under exceptional circumstances. For instance, those candidates mentioned by this Court in Jeness v Fortson, 403 US 431, p 439; 91 S Ct 1970, p 1974 (1971) both had significant associations with either the Republican or Democratic party. In 1972 no candidate qualified by petitioning for

ballot status in any of the states having a five percent requirement (Georgia, California, Montana, Nevada, Wyoming).

In fact, our research indicates that since 1948, no third party, except for the American Independence Party, has gained ballot status in these states. (We did not research this question beyond 1948)

In addition it has been reported that the American Independence Party spent Three Million (\$3,000,000.00) Dollars in order to qualify in all 50 states. In California the cost was Five Hundred Thousand (\$500,000.00) Dollars.<sup>1</sup>

In California the five percent requirement represents an insurmountable barrier to independent candidates gaining ballot status due to the enormous effort required to collect the requisite number

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1. Financing The 1968 Election, Herbert E. Alexander, D.C. Heath and Co., Lexington, Mass., 1971

of signatures. In 1972, 8,595,950 citizens voted in California.

A successful independent candidate would have to collect petitions equal to at least 6% of these voters in order to insure meeting the minimum requirement. Six percent would total 515,757 signatures.

The attached affidavit indicates an estimation of the monetary costs and the number of volunteers needed to meet this requirement. The experience of the American Independence Party quoted above would indicate that this figure is not unreasonable.

However, even if we were to assume that the requisite number of signatures could be collected for one-half the costs in terms of money and time, it is clear that the burden placed on independent candidates is such as to allow only the wealthiest to qualify.

It is important to note that we are

discussing the requirements of an independent candidate and more importantly the requirements such a person must meet prior to becoming an official candidate. Common knowledge and experience indicate that in raising money and support for a candidacy, official status as a bona fide candidate is crucial. In California, an independent is faced with the task of raising in excess of One Hundred Thousand (\$100,000.00) Dollars merely to qualify.

Because of population differences this figure is approximately five times the amount required in Georgia. Although Intervenor is of the opinion that experience has shown that even Twenty Thousand (\$20,000.00) Dollars is too great a burden for an independent or almost any third party, Intervenor also contends that there is a qualitative difference between raising Twenty Thousand (\$20,000.00) Dollars and One Hundred Thousand (\$100,000)

Dollars regardless of the number of potential contributors.

The facts of life are that the initial "seed" money required to raise money from a larger audience is much greater than that required to raise a proportionately smaller sum from a smaller audience.

It is conceivable (though hardly probable) that an independent or a third party could raise Twenty Thousand (\$20,000) Dollars without investing a sizable amount of money. To think that more than One Hundred Thousand (\$100,000) Dollars could be raised without a sizable investment is inconceivable unless the fund raiser had access to very wealthy contributors.

Accordingly, Intervenor repeats that the financial burden of meeting the California petition requirement will of necessity disqualify all but the most wealthy or those who have the support of

the wealthy.

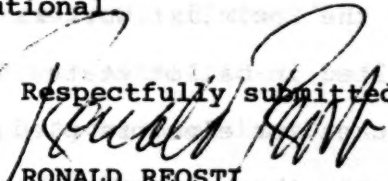
Restricting candidacy to the wealthy or to those who have the support of the wealthy is clearly unconstitutional.

Bullock v Carter, 405 US 134 (1972).

CONCLUSION

Section 6831 of California's Election Code, standing by itself, constitutes such a burden on voting and associational rights as to constitute an invidious discrimination. Accordingly, said section should be declared unconstitutional.

Respectfully submitted,

  
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DATED: May 25, 1972 1 - 313 - 965 - 3464

APPENDIX

AFFIDAVIT OF LARRY SEIGLE

STATE OF NEW YORK )

:SS.

COUNTY OF NEW YORK)

LARRY SEIGLE, being duly sworn,  
deposes and says:

1. I was the National Campaign Manager of the Socialist Workers Party 1972 presidential campaign.
2. During the course of that campaign, I personally supervised the ballot effort of the Socialist Workers Party which resulted in ballot status for our presidential ticket, or electors pledged to them, in twenty-three states.
3. As part of accomplishing this task, supporters of our party collected in excess of 500,000 signatures on nominating petitions, more than any other party in 1972.

4. While our party did achieve ballot status in twenty-three states, we did not achieve ballot status in California, nor did we attempt such an effort, because of our assessment that such an attempt would be futile given the impossible financial burden of collecting the signature requirement.

5. In considering whether or not to attempt ballot status, and in organizing any such effort, the following must be taken into account.

- a. Generally, double the amount of signatures required must be collected to assure that enough valid signatures have been obtained. Where a state imposes a maximum allowable that is less than double the requirement, as in California where a maximum of 6% may be submitted, extra

organizational effort must go into checking each signature before filing to assure that the signature is valid.

- b. In advance of the petitioning period, organizers must recruit petitioners and scout for good places to petition, where the flow of pedestrians will be sufficient to permit a maximum number of signatures to be collected.

- c. There is a saturation point, after which it becomes difficult to collect signatures in one given area. For this reason, signature gatherers must be spread out over a large area, which increases geographically in proportion to the number of signatures to be collected.

6. To place one statewide candidate running as an independent on the California ballot in 1974 would require signatures equal to 5% of the total number of persons who voted in 1972 (8,595,590), or 429,797 valid signatures. The maximum allowable to be submitted is 6%, or 515,757 signatures. To assure that enough valid signatures have been collected, petition organizers would have to shoot for collection of the maximum, or 515,757 signatures.
7. Based on our experience collecting signatures in 1972, the average number of signatures which will be collected in a full working day by a good petitioner is seventy (70). Not all these signatures will be valid, as many people do not know whether or not they are registered, and many will sign who voted in the primary election. (This factor will be offset by aiming for 6% rather than 5%)

8. By dividing 70 into the number of signatures we need to collect, 515,757, we can determine that 7,367 full work-days are required to collect the signatures.

9. Based on our experience in 1972, the same number of work-days are required to accomplish the task of scouting and checking the validity of signatures and sorting the petitions. Approximately half this work can be done by petitioners during hours in which they are not petitioning. Thus, approximately half the 7,367 work-days, or 3,684 additional work-days are required to complete the task of checking and sorting the petitions.

10. The total number of work-days required for both collecting signatures and checking signatures is 11,051.

11. Based on our experience in 1972, to collect half a million signatures, a minimum of ten headquarters disbursed

throughout the state will be required. Each headquarters will thus be responsible for the collection of 50,000 signatures in its geographic area. The headquarters must be maintained for a minimum of three months to allow for recruitment of petitioners, scouting for petitioning locations, and the petitioning itself. The expenses of the headquarters would be as follows:

Rent  
\$250 per mo. x 3 mo = \$750 x 10 \$ 7,500

Telephone  
\$75 per mo. x 3 mo = \$225 x 10 2,225

Office supplies \$100.00 x 10 1,000

1 full time office organizer  
\$100/wk x 12 weeks x 10 12,000

12. Signature gatherers must be recruited.

At a minimum, the advertising budget of each headquarters would be \$1,000.

\$1,000 x 10 headquarters = \$10,000

13. Signatures would be collected and signatures would be checked for validity

by volunteers. However, minimum subsistence would have to be paid to transport, house and feed petitioners during the petition drive. When a petition period is short, as in this case, it becomes absolutely necessary to rely on full-time help for which a subsistence is required. A minimum of \$6.00 per person per day is needed for food, transportation, medical incidentals, etc.

$\$6.00 \times 11,051 \text{ work-days} = \$66,306$   
This amounts to \$36.00 per week minimum subsistence for volunteers, and is only possible if all other personal expenses, such as entertainment, housing, clothing, etc., are not included. One cost factor not included is the loss of income to petitioners during the petition drive. If petitioners were working during this period and drawing \$20.00 a day from the job, their income during this period would be nearly a quarter million dollars.

14. Each headquarters will need a minimum of 500 petition boards upon which the petitions will be placed. This number will assure that the maximum number of volunteers may be utilized on Saturdays.

$$\begin{aligned} 500 \text{ board} \times \$1.00 \text{ each} \times 10 \text{ hg} &= \\ & \$5,000 \end{aligned}$$

15. Each headquarters will need to purchase from the state lists of registered voters from its geographic area for the purpose of checking to assure that enough valid signatures have been collected. The approximate cost of these lists is .50 per 1,000 names. This estimate is based on the cost in San Francisco county, and varies from county to county. There are 10,466,000 registered voters in California; however, organizers need purchase approximately half that number as the petitioning will be concentrated in ten centers.

$$5,233,000 \text{ names} \times .50/1000 = \$26,165$$

These lists will have to be duplicated to allow for use of more than one copy at a headquarters. Approximate cost for xeroxing is \$5,000.00.

16. One of the full-time organizers will need to travel between centers to coordinate the activity. Travel for this person will be approximately \$500.00.

17. Based on these figures, the minimum budget for conducting such a petition drive, when volunteer help is utilized, is \$135,696.00.

18. On information and belief, the McCarthy campaign -- last statewide campaign to make a serious if unsuccessful attempt to meet this requirement -- spent in excess of \$350,000 in 1968.

19. On information and belief, even if the period for collecting signatures in California were extended, the sheer financial burden of collecting the required number of signatures would make it

impossible to comply.

s/ Larry Seigle  
Larry Seigle

Sworn to before me this 24th  
day of May, 1973.

s/ Judith Baumann

Judith Baumann  
Notary Public, State of New York  
No. 31-0195298  
Qualified in New York County  
Commission Expires March 30, 1975